

WESTERN DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD V. CURTIS,

Plaintiff,

v.

DECISION AND ORDER
08-CV-900S

BRIAN FISCHER, Commissioner, New York
State Department of Correctional Services, et al.,

Defendants.

1. On December 10, 2008, Plaintiff commenced this action pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his right to freely express his religious beliefs as protected by the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc, and the First and Fourteenth Amendments of the United States Constitution. (Complaint, Docket No. 1, at ¶ 1.)

2. On February 17, 2008, Defendant Fischer moved to dismiss the Complaint as to him under Rule 12(b)(6). (Docket No. 21.)

3. Fischer did not file a memorandum of law as required by Local Rule of Civil Procedure 7.1(e) (“absent leave of Court . . . upon any motion filed pursuant to Federal Rules of Civil Procedure 12, 56 or 65(a), the moving party shall file and serve with the motion papers a memorandum of law”).

4. In support of his motion, Fischer filed a declaration attesting to his lack of personal involvement in the alleged violations.

5. Federal Rule of Civil Procedure 12(d) provides that if matters outside the pleadings, such as Fischer’s declaration, are presented on a Rule 12(b)(6) motion, the

court must either exclude it, or convert the motion to one for summary judgment under Rule 56 and allow the parties a reasonable opportunity to present all the material that is pertinent to the motion.

6. The Court declines to convert Fischer's motion to one for summary judgment. Excluding Fischer's declaration, the Court is left with a Notice of Motion requesting an order "dismissing the action herein pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the Complaint fails to state a claim upon which relief can be granted." This document provides no specific basis the relief sought, much less any legal argument in support of dismissal.

7. Defendant Fischer's Motion to Dismiss (Docket No. 21) is DENIED as wholly insufficient and for lack of compliance with the Local Rules.

SO ORDERED.

Dated: July 27, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge